

**United States Department of Labor
Employees' Compensation Appeals Board**

C.C., Appellant)

and)

**U.S. POSTAL SERVICE, BAKERSFIELD)
PROCESSING & DISTRIBUTION CENTER,)
Bakersfield, CA, Employer)**

**Docket No. 09-1392
Issued: January 14, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 6, 2009 appellant, through counsel, filed a timely appeal from May 19 and December 4, 2008 merit decisions of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained an injury causally related to the factors of her federal employment.

FACTUAL HISTORY

On March 14, 2008 appellant, then a 53-year-old mail clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a herniated disc and experienced low back pain, bilateral hip pain and left leg pain with numbness and weakness due to lifting heavy trays of mail, loading mail into hampers and dispatching trays of mail weighing over 25 pounds at work;

Office File No. xxxxxx312.¹ She first became aware of her condition on January 21, 2008 and first realized it was related to her employment on January 28, 2008.² Appellant stopped work and did not return. The employing establishment controverted the claim.

In a February 22, 2008 attending physician's report (Form CA-20), Dr. Pankaj Shukla, a Board-certified internist, diagnosed lumbar disc disease and noted that appellant had a preexisting lumbar condition with degenerative joint disease in 1982. He indicated with a check mark that he believed that her condition was caused by an employment activity and stated that she was lifting and pulling over 25 pounds. Dr. Shukla further indicated that appellant was totally disabled during the period February 11 through April 11, 2008 but that she could return to light duty on April 12, 2008.

Appellant also submitted a February 18, 2008 medical note that indicated she was disabled from work during the period February 18 through March 30, 2008.

By letter dated March 19, 2008, the Office notified appellant of the deficiencies in her claim and requested that she provide additional factual and medical evidence.

A February 1, 2008 magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed mild-to-moderate lumbar spondylosis with central canal and neural foraminal stenosis.

In a March 27, 2008 medical report, Dr. Shukla stated that he had treated appellant since June 3, 2003. He listed her complaint of chronic low back pain after heavy lifting at work. Appellant also reported that her old MRI scans revealed degenerative disc disease. Dr. Shukla stated that appellant's pain had recently worsened and that she experienced pain radiating to her legs to the extent that she could not walk. He addressed the results of an MRI scan, which showed mild-to-moderate lumbar spondylosis with central canal and neural foraminal stenosis.

By decision dated May 19, 2008, the Office denied appellant's claim on the grounds that she did not provide sufficient medical evidence to establish that she sustained an injury causally related to the accepted employment factors.

On June 17, 2008 appellant requested a review of the written record by an Office hearing representative.

In a June 10, 2008 medical report, Dr. Shukla stated that appellant continued to suffer from back pain radiating into her legs. He stated that she sustained an injury at work while lifting heavy objects and that her pain and leg weakness prevented her from walking properly.

¹ Appellant previously filed a claim for a September 30, 1982 herniated disc with bilateral hip pain under Office File No. xxxxxx059. She also filed claims for a March 7, 2002 bilateral foot injury under File No. xxxxxx731 and for a January 29, 2003 bilateral shoulder strain under File No. xxxxxx259.

² Appellant alleged that prior to her injury she was working limited duty due to her separate injuries. She stated that her injury occurred after she was removed from her position and required to work beyond her physical limitations. The only issue in this case is whether appellant sustained a new occupational disease due to her employment factors.

By decision dated December 4, 2008, an Office hearing representative affirmed the May 19, 2008 Office decision. It found that the submitted medical evidence was insufficient to establish appellant's claim as it did not contain a rationalized medical opinion showing that appellant sustained an injury due to her employment.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,⁴ including that she is an "employee" within the meaning of the Act⁵ and that she filed her claim within the applicable time limitation.⁶ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁷

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁵ *See M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁶ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁷ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The issue is whether appellant established that she sustained a back condition due to lifting and loading mail during her federal employment. The Board finds she has not met her burden of proof.

In support of her claim, appellant submitted a February 22, 2008 attending physician's report and other medical records dated through June 10, 2008 from Dr. Shukla who diagnosed lumbar disc disease and noted that appellant had preexisting degenerative disease of the lumbar spine. Dr. Shukla indicated with a checkmark that he believed appellant's condition was caused by her employment activities and stated that she was lifting over 25 pounds. The Board has held that an opinion on causal relationship that consists only of checking "yes" to a form question on whether the claimant's disability was related to her employment is of little probative value and insufficient to establish a causal relationship.¹⁰ As Dr. Shukla did not explain his reasoning for finding that appellant's condition was related to her employment activities, the Board finds that this report is of diminished probative value.¹¹

Further, the Board finds that the subsequent medical reports are similarly of diminished probative value. Dr. Shukla merely noted that appellant experienced chronic low back pain after heavy lifting at work. He stated that appellant continued to suffer back pain radiating into her legs resulting in difficulties walking. Dr. Shukla discussed the results of an MRI scan showing lumbar spondylosis with central canal and neural foraminal stenosis. He did not provide any opinion addressing how appellant's back condition was caused or aggravated by her work activities but simply repeated appellant's belief that her condition was caused by her employment.¹² Further, Dr. Shukla did not describe a full history of appellant's preexisting back condition or explain how his treatment in 2008 was related to her history of preexisting lumbar disease.¹³ As he did not provide a well-rationalized medical opinion, based on an accurate medical and factual background, explaining how appellant's current back condition was causally related to her employment activities, his opinion is insufficient to establish her claim.¹⁴

The only other medical evidence of record consists of a February 18, 2008 medical note indicating that appellant was disabled through March 30, 2008 and a February 1, 2008 MRI scan. As neither of these documents addressed causal relationship, they are also of diminished probative value.¹⁵

¹⁰ *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

¹¹ *Id.*

¹² The fact that a condition manifested during employment or appellant's belief that her condition was caused or aggravated by employment conditions is insufficient to establish causal relationship. *Frederick H. Coward, Jr.*, 41 ECAB 843, 852 (1990); *Ruby I Fish*, 46 ECAB 276 (1994).

¹³ *See Frank Luis Rembisz*, 52 ECAB 147 (2000).

¹⁴ *See Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁵ *See Donald T. Pippin*, 54 ECAB 631 (2003); *Conard Hightower*, 54 ECAB 796 (2003).

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury causally related to the factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 4 and May 19, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 14, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board